

RESOLUTION # 07-02

**RESOLUTION
CITY OF SOMERSET**

A RESOLUTION OF THE CITY OF SOMERSET, KENTUCKY ESTABLISHING A WATER EMERGENCY AND AUTHORIZING THE CITY MAYOR TO ENTER INTO NECESSARY AGREEMENTS FOR FUNDING.

IN ACCORDANCE WITH EXECUTIVE ORDER 2007-298 ISSUED APRIL 13, 2007 BY THE GOVERNOR OF THE COMMONWEALTH OF KENTUCKY;

The City of Somerset, Kentucky, has determined that a water emergency exists in Somerset, Kentucky, as a result of the U.S. Army Corps of Engineers lowering Lake Cumberland to an elevation of 680 and possibly lowering said lake further, thereby resulting in a lack of raw water supply, and

WHEREAS, The City of Somerset, Kentucky owns and operates the water system in Somerset, Kentucky, and

WHEREAS, The Kentucky Revised Statutes, requires that a written determination be made regarding the emergency situation.

Now, therefore, we, the Council of the City of Somerset and Eddie Girdler, in his capacity as Mayor of the City of Somerset, Kentucky, pursuant to the authority vested in us and pursuant to KRS 45A.380 do hereby determine that:

An emergency presently exists in the City of Somerset, Kentucky due to the lowering of Lake Cumberland to an elevation of 680, with the possibility of further lowering, and

Competition is not feasible and would drastically delay efforts to alleviate said emergency.

Accordingly, noncompetitive negotiation shall be utilized for contracting with one or more engineering firms and construction companies in order to expedite relief to the residents of Somerset. Said contracts to be issued for the project designated as the Somerset Emergency Raw Water Intake Modifications Project, WRIS Project Number WX21199070.

FURTHER, WHEREAS, the City of Somerset, Kentucky has applied for, and been awarded, the following 298 Fund project to be administered by the Kentucky Governor's Office for Local Development:

Somerset Emergency Raw Water Intake Modifications Project

AND, WHEREAS, it is recognized that the 298 Fund monies available to the City for the purposes stated herein impose certain obligations and responsibilities upon the City.

NOW, THEREFORE, be it resolved this 14th day of May, 2007, by the City of Somerset:

The Mayor is hereby authorized to execute and sign any and all documents, including a memorandum of agreement, as may be required by GOLD for the furtherance of the above-referenced project(s) and to act as the authorized correspondent for said project(s).

Done this 14th day of May, 2007. Motion by Mr. New
and seconded by Mr. Girdler, members present voting aye in favor.

By: Eddie Girdler
Mayor Eddie Girdler

ATTEST: David Hedberg, City Clerk

MEMORANDUM OF AGREEMENT

between the

**COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR
GOVERNOR'S OFFICE FOR LOCAL DEVELOPMENT**

and the

City of Somerset, KENTUCKY

THIS MEMORANDUM OF AGREEMENT (hereinafter 'the Agreement'), by and between the Commonwealth of Kentucky, Office of the Governor, Governor's Office for Local Development, Office of State Grants (hereinafter 'GOLD'), with address at 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601 and the City of Somerset, Kentucky, with address of Post Office Box 989 - Somerset, KY 42502, (hereinafter 'the Recipient') is made and entered into as of the date last executed by the parties thereto as evidenced by the dates written below.

WHEREAS, the United States Army Corps of Engineers has stated that Wolf Creek Dam on the Commonwealth of Kentucky's Lake Cumberland is "one of the highest risk dams in the Corps Inventory..."; and

WHEREAS, it is necessary for Lake Cumberland's lake elevation to be significantly lowered to allow for the necessary repairs to Wolf Creek Dam; and

WHEREAS, Commonwealth of Kentucky Executive Order 2007-298 declares that a State of Emergency exists in the following areas due to the necessity of lowering Lake Cumberland for repairs to Wolf Creek Dam: Caldwell, Christian, Clinton, Cumberland, Logan, Lyon, McCreary, Monroe, Pulaski, Russell, Simpson, Todd, Trigg, and Wayne counties; and

WHEREAS, Commonwealth of Kentucky Executive Order 2007-298 created a fund pool which the Governor's Office for Local Development has been assigned to administer; and

WHEREAS, the Recipient has submitted an application for these funds, with the application having been approved by GOLD and the State Budget Director, for the following project and in the following amount: Somerset Raw Water Intake Modification Project (hereinafter 'the Project') and is to be funded in an amount not to exceed \$565,000.00; and

WHEREAS, the Recipient has agreed to the terms and conditions enumerated herein and has further agreed to effectuate the completion of the Project in accordance with those terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, commitments, and conditions contained herein, GOLD and the Recipient agree as follows:

1 – EFFECTIVE DATES OF THE AGREEMENT

- A. This Agreement shall be effective upon approval by the Secretary of the Finance and Administration Cabinet, and only upon filing with the Government Contract Review Committee of the Legislative Research Commission (Committee). If the Agreement amount is greater than Fifty Thousand Dollars and No Cents (\$50,000.00), the Government Contract Review Committee has disapproval authority over this Agreement. Should this Agreement be disapproved by the Government Contract Review Committee, the Government Contract Review Committee's disapproval may be overridden in accordance with KRS 45A.695(7).

Pursuant to KRS 45A.700, should this Agreement be for the sum of \$50,000.00 or less, as denoted in Section 2(A), this Agreement shall be effective upon filing with the Government Contract Review Committee approval. The Agreement shall continue in effect through June 30, 2008, unless terminated at an earlier date in accordance with the terms set forth herein. The terms of the Agreement may be renewed or extended upon mutual written agreement duly executed by the parties.

- B. This Agreement may be terminated by either party at any time for cause and may be terminated by either party without cause upon 30 days written notice to the other party. Termination of this Agreement shall not diminish or in any other manner affect any other remedy that may be available to the parties for any breach of the Agreement that occurs prior to the termination.

2 - OBLIGATIONS OF GOLD

GOLD covenants and agrees, conditioned upon the timely performance by the Recipient of its obligations herein, to undertake the following obligations:

- A. GOLD shall, subject to the availability of appropriate funds, pay the recipient a sum not to exceed \$565,000.00 in accordance with the submission of a Request for Disbursement.
- B. Payments pursuant to this Agreement shall not be authorized for services rendered after Government Contract Review Committee disapproval unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head if the agency has been granted delegation authority by the Secretary.
- C. GOLD may, but is not required to, make periodic inspections of the Project and may send inspection reports to the Recipient. Deficiencies identified in an inspection report shall be corrected by the Recipient and their correction reported in writing to GOLD within two weeks of receipt of the inspection report.
- D. GOLD shall cooperate fully with the Recipient in order to facilitate the obligations set out in this memorandum.

- E. GOLD shall close out the Project upon satisfactory completion of the Project by the Recipient in accordance with the terms and conditions of this Agreement and submission of an acceptable project completion report in the form prescribed by GOLD.

3 - OBLIGATIONS OF THE RECIPIENT

The Recipient covenants and agrees to undertake the following obligations:

- A. The Recipient shall perform and cause to be performed all necessary acts to plan, design and complete the Project in accordance with the Scope of Work (Attachment A), which is hereby incorporated as if set out herein and made a part of this Agreement.
- B. The Recipient shall obtain all necessary permits, licenses, and approvals required for completion of the Project from the appropriate governmental entities.
- C. The Recipient shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies.
- D. The Recipient shall use its own procurement procedures that reflect applicable state and local laws for all purchases of goods or services related to the Project.
- E. The Recipient shall submit quarterly progress reports to GOLD in the form prescribed by GOLD until the Project is closed out by GOLD. The reports shall be submitted by the 30th day of the month following the last day of each calendar quarter (i.e., January 30th, April 30th, July 30th, and October 30th). The report shall list, at a minimum, the line items in the cost estimate and the percent of completion as well as any indication of problems or time delays.
- F. The Recipient shall retain all records relating to the Project until the records are audited by GOLD, or for three years after the Project has been closed out by GOLD, whichever occurs first.
- G. The Recipient shall submit a copy of the legislative body resolution authorizing the execution of this Agreement.
- H. The Recipient shall cooperate fully with GOLD and provide any documentation requested by GOLD in order to facilitate the obligations set out in this Agreement.
- I. The Recipient shall begin design of the Project no later than upon receipt of the initial draw. The Project shall be completed by the Recipient no later than June 30, 2008.
- J. The Recipient shall be responsible for the expenditure of funds in accordance with Commonwealth of Kentucky Executive Order 2007-298 and all other applicable laws. Any unauthorized or improper expenditure of funds, or expenditure of funds other than in accordance with the terms of this Agreement shall be deemed a default of this Agreement by the Recipient. The Recipient shall repay GOLD all funds that are not spent in accordance with this Agreement and appropriate laws.

- K. The Recipient shall submit a project completion report to GOLD in the form prescribed by GOLD upon completion of the Project.
- L. All line-item recipients, with the exception of 6th Class Cities covered by KRS 91A.040(2) and (3) and Districts covered by KRS 65.065(2), are subject to an independent annual audit conducted in accordance with generally accepted auditing standards, Government Auditing Standards, issued by the Comptroller General of the United States, the provisions of Office of Management and Budget Circular A-133, "Audits of State and Local Governments," if applicable, and the Audit Guide for Fiscal Court Audits issued by the Kentucky Auditor of Public Accounts. The audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to GOLD, Office of State Grants, no later than 12 months after the end of each fiscal year in which funds were received by a recipient.
- M. Those 6th Class Cities and Districts referenced above shall be required to submit a copy of their financial statement, when applicable, to GOLD, Office of State Grants, no later than 12 months after the end of each fiscal year in which funds were received by a recipient. Where a financial statement is not applicable, pursuant to the relevant statute, an audit shall be required.

4 - MUTUALITY OF OBLIGATIONS

- A. The parties agree that the obligations imposed upon them are for the benefit of the parties and the timely fulfillment of each and every obligation in accordance with this Agreement is necessary. The failure of any party to fulfill its obligations under this Agreement or the failure of any event to occur by a date established by this Agreement shall constitute a breach of it unless the fulfillment of such obligation is waived or modified by written Agreement of the parties.
- B. In the event of default by the Recipient, including the failure to meet any time deadlines set out in this memorandum, GOLD may declare this Agreement void from the beginning without further obligation to the Recipient and may commence appropriate legal or equitable action to enforce its rights under this Agreement including action for recovery of funds expended hereunder.
- C. Except as may otherwise be provided herein, the parties to this Agreement shall be solely responsible for any costs incurred in fulfilling their obligations under this Agreement and no party shall have any claim against the other party for reimbursement of costs whether or not a party is in default.

5 - MISCELLANEOUS PROVISIONS

- A. This Agreement may be signed by each party upon a separate copy, and in such case one counterpart of this Agreement shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This Agreement may be executed in two or more counterparts each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms and conditions hereof to produce or account for more than one of such counterparts.

- B. The headings set forth in this Agreement are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
- C. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Agreement which assignment shall be prohibited except with the prior written consent of all parties hereto.
- D. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.
- E. Time is of the essence in the performance of each of the terms and conditions of this Agreement.
- F. The parties agree that any suit, action, or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky, Frankfort Division.
- G. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

If to GOLD: Governor's Office for Local Development
 Office of State Grants
 1024 Capital Center Drive, Suite 340
 Frankfort, Kentucky 40601
 ATTENTION: Gene Kiser

If to the Recipient: City of Somerset, KENTUCKY
 Post Office Box 989
 Somerset, KY 42502
 ATTENTION: Eddie Girdler, Mayor

Initial EM

- H. GOLD may audit or review all documentation and records of the Recipient relating to this project pursuant to the provisions of KRS 45A.150.

- I. The Recipient agrees that GOLD, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers records, or other evidence provided to the Commonwealth, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency was providing the services.
- J. The parties agree that this Agreement is not entered into under the provisions of KRS 56.8161 et seq.

IN WITNESS WHEREOF, GOLD and the Recipient have executed this memorandum as of the dates written below.

City of Somerset

COMMONWEALTH OF KENTUCKY

Date 5/13/07

Date _____

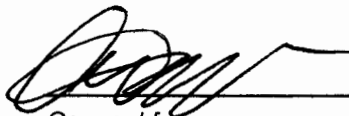


Eddie Girdier, Mayor
City of Somerset

Steve Robertson, Commissioner
Governor's Office for Local Development

Examined as to form and legality only:

Examined as to form and legality only:



Counsel for
City of Somerset

Counsel for
Governor's Office for Local Development

Project ID

7

**Scope of Work
Attachment B**

County

PULASKI

Project Name

Somerset Raw Water Intake Modification Project

Allocation

\$565,000.00

Fund

EO 298

Account #

Scope of Work

FUNDS WILL BE USED FOR SOMERSET RAW WATER INTAKE PROJECT (WX21199070) INCLUDING BUT NOT LIMITED TO COSTS OF PUMPS AND RELATED EQUIPMENT, COST OF PIPE AND APPURTENANCES, COSTS FOR BARGES AND RELATED EQUIPMENT, LABOR COSTS (CONSTRUCTION, ASSOCIATED AND ADDITIONAL), LEGAL EXPENSES, ENGINEERING FEES, CONTINGENCY FUND AND ADMINISTRATION COSTS.